

Colorado Department of Health Care Policy and Financing
Colorado Indigent Care Program (CICP)

www.chcpf.state.co.us/HCPF/cicp/cicpindex.asp

This reference document is provided for attorneys and clients who are seeking information on subrogation rights concerning discounted medical services provided under the Colorado Indigent Care Program (CICP). Information provided in this document: CICP Subrogation Policy, Relevant Regulations and Provider Contract.

CICP Subrogation Policy:

The Colorado Indigent Care Program (CICP) is not an insurance company. The CICP is a state program that provides partial reimbursement (grants) to providers for offering medical care to eligible underinsured and uninsured residents. There is no guarantee of medical benefits or services to clients under this program. The CICP does not directly pay medical claims related to any client or for any specific medical service provided to the client. Statutes concerning the CICP can be found at 26-15-101 through 26-15-112, Colorado Revised Statutes (C.R.S.) and regulations concerning the CICP can be found at Code of Colorado Regulations (CCR) at 10 CCR 2505-10, sections 8.900, et seq. The Colorado Department of Health Care Policy and Financing administers the CICP.

The CICP does not have any subrogation rights concerning any settlements or judgments, but those rights are retained by the facility where the medical service was provided (the provider). The provider is obligated to make all reasonable efforts to collect amounts due from third party coverage and applicable co-payment amounts, and shall maintain auditable evidence of such efforts. The client's medical claims and service information, and any related charges, must be obtained directly from the provider and the client's attorney is obligated to request the relevant information directly from the provider. Through any settlement or judgment award, the provider has the right to recover all applicable charges related to the medical service provided, even if the initial charge was discounted under the CICP.

Relevant Regulations:**8.900 PROGRAM OVERVIEW**

The Colorado Indigent Care Program (CICP) is a program that distributes federal and State funds to partially compensate qualified health care providers for uncompensated costs associated with services rendered to the indigent population. Qualified health care providers who receive this funding render discounted health care services to Colorado residents, migrant workers and legal immigrants with limited financial resources who are uninsured or underinsured and not eligible for benefits under the Medicaid Program or the Children's Basic Health Plan.

The Colorado Department of Health Care Policy and Financing (Department) administers the CICP by distributing funding to qualified health care providers who serve eligible persons who are indigent. The CICP issues procedures to ensure the funding is used to serve the indigent population in a uniform method. Any significant departure from these procedures will result in termination of the contract with, and the funding to, a health care provider. The legislative authority for this program was enacted in 1983 and is at 26-15-101, et seq., C.R.S., the "Reform Act for the Provision of Health Care for the Medically Indigent."

The CICP does not offer a specified discounted medical benefit package or an entitlement to medical benefits or funding to individuals or medical providers. The CICP does not offer a health coverage plan as defined in Section 10-16-102 (22.5), C.R.S. Medically indigent persons receiving discounted health care services from qualified health care providers are subject to the limitations and requirements imposed by article 15, title 26, C.R.S.

8.903 F. HIPAA

The Department has determined that the Colorado Indigent Care Program (CICP) is NOT a "covered entity" under the Health Insurance Portability and Accountability Act of 1996 privacy regulations (45 C.F.R. Parts 160 and 164). Because the Colorado Indigent Care Program (CICP) is not a part of Medicaid, and its principal activity is the making of grants to providers who serve eligible persons who are medically indigent, CICP is not considered a covered entity under HIPAA. The state personnel administering the CICP will provide oversight in the form of procedures and conditions, to ensure funds provided are being used to serve the target population, but they will not be significantly involved in any health care decisions or disputes involving a qualified health care provider or client.

**APPROVED WAIVERED FORM
CICP Provider Contract
(REV. 6/19/02)**

**COLORADO INDIGENT CARE PROGRAM
PROVIDER CONTRACT**

THIS CONTRACT, made this 1st day of _____, _____, by and between the State of Colorado for the use and benefit of the Department of Health Care Policy and Financing, Operations and Finance Office, 1570 Grant Street, Denver, CO 80203-1818, hereinafter referred to as the "State" or the "Department," and _____, hereinafter referred to as "Contractor".

Recitals:

1. Authority exists in the law and funds have been budgeted, appropriated and otherwise made available for the State's current fiscal year, and a sufficient unencumbered balance thereof remains available for payment to Contractor under this Contract; and
2. Required approval, clearance and coordination has been accomplished from and with appropriate agencies; and
3. The Reform Act for the Provision of Health Care for the Medically Indigent (MI Act) is set forth in Sections 26-15-101 through 26-15-112, Colorado Revised Statutes (C.R.S.); and
4. The MI Act establishes a program for the provision of partial reimbursement of the cost of medical services provided to medically indigent individuals; and
5. Contractor wishes to participate in the Colorado Indigent Care Program, hereinafter referred to as the "Program" or "CICP", subject to the terms and conditions of this Contract.

NOW THEREFORE, the parties hereby agree as follows:

A. Scope of Work

Contractor agrees:

1. **Applicable Laws and Rules:** To abide by all applicable federal and State laws and rules, including, but not limited to, the provisions of the MI Act and the Department's regulations found in the Code of Colorado Regulations (CCR) at 10 CCR 2505-10, sections 8.900, et seq., as they now exist or may hereafter be amended.
2. **Program Guidelines:** To abide by all the terms and provisions of the "Colorado Indigent Care Program Manual", as published and amended by the Department from time to time (CICP Manual), unless the Department grants a written waiver of specific terms and provisions. Waivers must be granted or renewed by the Department each State fiscal year.
3. **Services:** To manage appropriated funds in such a way that emergency care services are provided to indigent persons throughout each State fiscal year, and to provide necessary medical services to indigent persons to the extent of Contractor's physical, staff and financial capabilities.
4. **Patient Eligibility:** To require indigent persons to provide proof of indigency and to determine eligibility within CICP guidelines as described in the CICP Manual and Department regulations.

5. **Participating Obstetricians (Hospital Only):** If Contractor has been granted a license to operate a hospital by the Colorado Department of Public Health and Environment, Contractor agrees to abide by the obstetrician requirements of the Program. The State requires that a hospital must have at least two obstetricians with staff privileges at the hospital. These obstetricians must agree to provide obstetric services to indigent persons. In the case where a hospital is located in a rural area, as defined by the U.S. Executive Office of Management and Budget, the term "obstetrician" includes any physician with staff privileges at the hospital to perform non-emergent obstetric procedures. The obstetrics requirement does not apply to a hospital in which the patients are predominantly under 18 years of age, or which does not offer non-emergent obstetric services as of December 21, 1987.
6. **Transfer of patients:** To not transfer indigent persons to another provider participating in the CICP without first obtaining the receiving provider's consent.
7. **Recipients:** In accordance with federal and State statutes and Department regulations, Contractor shall not collect payments other than co-payments from eligible recipients, relatives of recipients or recipient's estates for any unpaid inpatient or outpatient services reimbursable under the Program.
8. **Records Retention and Availability:** That all records, documents, communications, and other materials (except medical records of Program Patients) related to Contractor's participation in the Program shall be the property of the State and maintained in a central location by Contractor as custodian thereof on behalf of the State, and shall be accessible to the State for a period of five (5) State fiscal years after the expiration of each State fiscal year, or for such further period as may be necessary to resolve any matters which may be pending at the expiration of each five (5) State fiscal year period, or until an audit performed under the provisions of this Contract has been completed with the following qualification: If an audit by or on behalf of the federal and/or State government has begun, but is not completed at the end of the five (5) State fiscal year period, or if audit findings have not been resolved after the five (5) State fiscal year period, such materials shall be retained for six (6) months after the filing of the final audit report and response thereto.

B. Reimbursement

1. **Reimbursement and Rates:** Contractor shall be reimbursed by the Department, with retroactive adjustment, in such amounts as may from time to time be set by the Department pursuant to the MI Act and the regulations promulgated thereunder. These Department regulations may be found at 10 C.C.R. 2505-10, section 8.903.

The Department will send Contractor notification of the reimbursement rate, other reimbursement and Long Bill appropriation applicable to Contractor for each State fiscal year no later than thirty (30) days prior to July 1 of each State fiscal year. The Department will send to Contractor, without prior notice, notification of any changes in the reimbursement rate, other reimbursement or Long Bill appropriation applicable to Contractor for a current State fiscal year that occur after July 1 of that State fiscal year. Notification of, or any changes in, the reimbursement rate, other reimbursement and Long Bill appropriation will be sent by the Department in substantially the same form as Attachment A to this contract.

The Contractor agrees to transfer/contribute funds to the State in an amount specified in the Department's notification of the reimbursement rate, other reimbursement and Long Bill appropriation effective July 1 of each year, as modified from time to time. These funds shall be transferred to the State in no less frequently than twelve, equal, estimated, monthly payments to be received no later than the seventh working day of each month. These estimates will be reconciled to actual when final amounts become available. The Contractor agrees to participate in any disallowances by the United States Department of Health and Human Services or the Centers for Medicare and Medicaid Services of contributions made by the Contractor.

If the Contractor reduces its transfer/contribution under this provision for any reason, the State shall have the right, in addition to those remedies set out in the remedies section of this Contract, to withhold payment and/or have the right to terminate this contract due to default/cause.

2. **Compensation/Maximum Payable:** Payment pursuant to this Contract will be made as earned in accordance with the Department's regulations under the MI Act, in whole or in part, from available state funds for the purchase of the within-described services. Reimbursement to Contractor under the Program shall not exceed 100 percent of Contractor's total costs or charges, whichever is less, applicable to providing care to the medically indigent; provided, however, the maximum amount of State funds available for the purchase of CICP services shall not exceed the Long Bill appropriation applicable to the Contractor; and the liability of the State, at any time, for such payments shall be limited to the unexpended amount remaining of such funds.

Financial obligations of the State payable after the current State fiscal year, and for each State fiscal year thereafter, are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

3. **Third Party and Patient Liability:** Contractor shall make all reasonable efforts to collect amounts due from third party coverage and applicable co-payment amounts, and shall maintain auditable evidence of such efforts.
4. **Limitations:** Contractor shall not be reimbursed for care rendered pursuant to its obligations under the federal Hill-Burton Act.
5. **Billings:** Contractor agrees to submit billings for authorized medically necessary inpatient and outpatient services in the prescribed form and manner required by Department regulations and the CICP Manual. Contractor agrees to provide medically necessary inpatient and outpatient services on the basis of being compensated as set forth in this Contract. In the event Contractor should receive payment for services in an amount in excess of that authorized by this Contract, Contractor agrees to permit the Department the option and discretion to recover the overpayment through one or more of the following options:
 - a. To deduct the amount from future payments;
 - b. To require Contractor to make repayment to the Department of said excess payment within sixty (60) days of written demand by the Department; or
 - c. To recover such excessive payments by other legal means.

C. Required Documentation

1. **Authorized Signer:** Contractor agrees to submit with this Contract written evidence of the authority of the authorized signer for Contractor. This may be in the form of copies of corporate by-laws, a resolution of Contractor's board of directors, or other sufficient evidence. Such authority must expressly empower the authorized signer to legally bind Contractor to all of the terms and conditions contained herein, and must also expressly delegate to such person the authority to represent Contractor in all future negotiations with the Department.
2. **Licensure:** Contractor agrees to submit with this Contract a copy of its hospital license or community clinic license. Contractor certifies it has been granted a license to operate a hospital or community clinic by the Colorado Department of Public Health and Environment, and that its license is currently in good standing. Contractor agrees to maintain this license in good standing throughout the term of this Contract or any extension(s) thereof.

Contractor certifies that, at the time of entering into this Contract, it meets all statutory and regulatory requirements for entering into this Contract, and that it has currently in effect all necessary licenses, approvals, and insurance required to properly provide the services and/or supplies covered by this Contract. Additionally, all employees of Contractor performing services under this Contract shall hold all required licenses or certifications, if any, to perform their responsibilities. Any revocation, withdrawal or nonrenewal of any license, certification, approval, or insurance required for Contractor to properly perform its obligations under this Contract shall be grounds for termination of this Contract by the State.

Contractor further certifies that, if it is a foreign corporation, it has a current Certificate of Authority to do business in Colorado issued by the Colorado Secretary of State and has designated a registered agent for service of process, and is otherwise in compliance with Colorado law governing foreign corporations.

- 3. Liability Insurance/Fidelity Coverage - Contractor:** Contractor shall provide certificates showing adequate insurance coverage to the State within ten (10) working days after signing and delivering this Contract to the Department, unless otherwise provided.

During the term of this Contract, and any extension(s) hereof, Contractor agrees to keep in force an insurance policy or policies, issued by a company or companies authorized to do business in Colorado, in the minimum amounts specified below unless specifically waived herein. In the event of cancellation of any such coverage, Contractor shall immediately notify the State of such cancellation:

- a. Standard Worker's Compensation and Employer Liability as required by State statute, including, without limitation, occupational disease coverage, covering all employees on or off the work site, who are acting within the course and scope of their employment.
- b. General, Personal Injury, and Automobile Liability (including bodily injury, personal injury, and property damage) minimum coverage:
 - i. Combined single limit of \$600,000 if written on an occurrence basis.
 - ii. Any aggregate limit will not be less than \$1,000,000.
 - iii. Combined single limit of \$600,000 for policies written on a claims-made basis. The policy shall include an endorsement, certificate or other evidence that coverage extends two years beyond the termination of the Contract.
 - iv. If any aggregate limits are reduced below \$600,000 because of claims made or paid during the required policy period, Contractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish the Department with a certificate or other document showing compliance with this provision.
- c. For licensed professionals providing services in their professional capacity, professional liability insurance in an amount not less than \$1,000,000 for any injury to one person in any single occurrence, and, no less than \$1,000,000 for any injury to two or more persons in any single occurrence.

The State shall be named as additional insured on all liability policies.

The insurance shall include provisions preventing cancellation without 60 days prior notice to the State by certified mail.

If Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, Sections 24-10-101, et seq., C.R.S., as it now exists or may hereafter be amended (CGIA), Contractor shall at all times during the term of this Contract, or any extension(s) thereof, maintain such liability insurance by commercial policy or self-insurance as is necessary to meet its liabilities under the CGIA. Upon request by the State, Contractor shall provide to the State proof of such insurance.

EXCEPT AS TO "PUBLIC ENTITIES", NO PAYMENTS SHALL BE MADE BY THE STATE UNDER THIS CONTRACT UNTIL REQUIRED CERTIFICATES OF INSURANCE AND ADDITIONAL INSURED ENDORSEMENTS ARE RECEIVED BY THE STATE. IN THE EVENT OF CANCELLATION OF ANY SUCH COVERAGE, INCLUDING COVERAGE FOR "PUBLIC ENTITIES", CONTRACTOR SHALL IMMEDIATELY NOTIFY THE STATE OF SUCH CANCELLATION.

CONTRACTOR ACKNOWLEDGES THAT CONTRACTOR AND ITS EMPLOYEES ARE NOT ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS CONTRACTOR OR A THIRD PARTY PROVIDES SUCH COVERAGE, AND THAT THE STATE DOES NOT PAY FOR OR OTHERWISE PROVIDE SUCH COVERAGE.

D. General Provisions

1. **Term of Contract:** This Contract shall be effective upon approval by the State Controller, or the State Controller's designee, or on October 1, 2003, whichever is later and shall continue in effect until it is terminated for default, lack of funding, by law or at the convenience of the parties.
2. **Termination by Contractor:** Contractor agrees to provide the Department with at least sixty (60) days prior written notice in the event of termination of participation in the Program for any reason, including, but not limited to, cessation of business, election to no longer participate, or any transfer of the ownership, administration, operation, or substantially all the assets of said business.

This provision shall not apply in the case where amendments to this contract or revisions, including additions, to the regulations of the Department affecting the Program are determined to be unacceptable to Contractor and for such reason Contractor elects to discontinue participation in the Program. In such event, Contractor shall notify the Department in writing of its intent to discontinue participation in the Program, and Contractor and the Department shall forthwith negotiate the termination date. In no event shall such negotiated termination date exceed a sixty (60) day period from the date of original notification from Contractor. In the event of such termination, Contractor shall be obligated to return any payment advanced under the provisions of this Contract.

3. **Termination by State for Convenience:** The State shall have the right to terminate this Contract by giving the other party sixty (60) days prior written notice. If notice is so given, this Contract shall terminate on the expiration of the sixty (60) days, and the liability of the parties hereunder for further performance of the terms of this Contract shall thereupon cease, but the parties shall not be released from the duty to perform their obligations up to the date of termination. In the event of such termination, Contractor shall be obligated to return any payment advanced under the provisions of this Contract.
4. **Termination for Default/Cause:** If, through any cause, Contractor shall fail to fulfill, in a timely and proper manner, its obligations under this Contract, or if Contractor shall violate any of the covenants, agreements, or stipulations of this Contract, the State shall thereupon have the right to terminate this Contract for cause by giving written notice to Contractor of its intent to terminate and at least ten (10) days opportunity to cure the default or show why termination is otherwise not appropriate. In the event of such termination, Contractor shall be obligated to return any payment advanced under the provisions of this Contract.

Notwithstanding the above, Contractor shall not be relieved of liability to the State for any damages sustained by the State by virtue of any breach of the Contract by Contractor, and the State may withhold any payment to Contractor for the purpose of mitigating its damages until such time as the exact amount of damages due to the State from Contractor is determined.

If after such termination it is determined, for any reason, that Contractor was not in default, or that Contractor's actions/inaction was excusable, such termination may, at the State's sole option, be treated as a termination for convenience. In such a case, the State shall deliver to Contractor notice of such election, and the rights and obligations of the parties shall be the same as if the Contract had been terminated for convenience pursuant to the provisions described herein, except that the sixty (60) day notice period shall run from the date of the State's notice of intention to terminate for default/cause.

5. **Severability:** To the extent that this Contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the Contract, the terms of this Contract are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof. The waiver of any breach of a term hereof shall not be construed as a waiver of any other term, or the same term upon subsequent breach.
6. **Cooperation:** Contractor agrees to give full cooperation to the Department and its duly authorized agents in the administration of the Program.

7. **Beneficiary:** It is expressly understood and agreed that the enforcement of the terms and conditions of this Contract and all rights of action relating to such enforcement, shall be strictly reserved to the State and the named Contractor. Nothing contained in this Contract shall give or allow any claim or right of action whatsoever by any third person. It is the express intention of the State and Contractor that any such person or entity, other than the State or Contractor, receiving services or benefits under this Contract shall be deemed an incidental beneficiary only.
8. **Compliance with Applicable Laws:** Contractor shall at all times during the term of this Contract, or any extension(s) thereof, strictly adhere to all applicable federal and state laws and implementing regulations as they currently exist and may hereafter be amended. Contractor acknowledges that the following laws, among others, are included within the scope of such federal and state laws:

-Age Discrimination Act of 1975	42 U.S.C. Sections 6101 et seq.
-Age Discrimination in Employment Act of 1967	29 U.S.C. Sections 621-634
-Americans with Disabilities Act of 1990 (ADA)	42 U.S.C. Sections 12101 et seq.
-Equal Pay Act of 1963	29 U.S.C. Section 206
-Immigration Reform and Control Act of 1986	8 U.S.C. Section 1324b
-Section 504 of the Rehabilitation Act of 1973	29 U.S.C. Section 794
-Title VI of the Civil Rights Act of 1964	42 U.S.C. Section 2000d
-Title VII of the Civil Rights Act of 1964	42 U.S.C. Section 2000e
-Title IX of the Education Amendments of 1972	20 U.S.C. Sections 1681 et seq.
-Colorado Civil Rights Law	Sections 24-34-301, et seq., C.R.S.
-Health Insurance Portability and Accountability Act of 1996	42 U.S.C. Sections 1320d – 1320d(8)

Contractor also shall comply with any and all laws and regulations prohibiting discrimination in the specific program(s) which is/are the subject of this Contract. In consideration of and for the purpose of obtaining any and all federal and/or State financial assistance, Contractor makes the following assurances, upon which the State relies.

- a. Contractor will not discriminate against any person on the basis of race, color, national origin, age, sex, religion or handicap, including Acquired Immune Deficiency Syndrome (AIDS) or AIDS related conditions, in performance of work under this Contract.
- b. At all times during the performance of this Contract, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in, or denied benefits of the service, programs, or activities performed by Contractor, or be subjected to any discrimination by Contractor.
- c. Contractor shall take all necessary affirmative steps, as required by 45 CFR § 92.36(e) and applicable State law, regulations, and Executive Orders, to assure that small and minority businesses and women's business enterprises are used, when possible, as sources of supplies, equipment, construction, and services purchased under this Contract.

9. Confidentiality of Records: Contractor shall protect the confidentiality of all applicant/recipient records and other materials that are created and maintained under this Contract. Except for purposes directly connected with the administration of the Program, no information about or obtained from any Program applicant/recipient in possession of Contractor shall be disclosed in a form that identifies the applicant/recipient without the prior written consent of the applicant/recipient or, if such person is a minor, the minor's parent or guardian. Contractor shall have written policies governing access to, duplication and dissemination of all such information. Contractor shall advise its employees, agents and subcontractors, if any, that they are subject to these confidentiality requirements. Contractor shall provide its employees, agents and subcontractors, if any, with a copy or written explanation of these confidentiality requirements before access to confidential data is permitted.

10. Conflict of Interest: During the term of this Contract, or any extension(s) thereof, Contractor shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with Contractor fully performing Contractor's obligations under this Contract.

Additionally, Contractor acknowledges that, in governmental contracting, even the appearance of a conflict of interest is harmful to the interests of the State. Thus, Contractor agrees to refrain from any practices, activities or relationships which could reasonably be considered to be in conflict with Contractor's fully performing Contractor's obligations to the State under the terms of this Contract, without the prior written approval of the State.

In the event that Contractor is uncertain whether the appearance of a conflict of interest may reasonably exist, Contractor shall submit to the State a full disclosure statement setting forth the relevant details for the State's consideration and direction. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the apparent conflict shall be grounds for termination of the Contract.

11. Proprietary Information:

- a. Definition: Proprietary information for the purposes of this Contract is information relating to a party's research, development, trade secrets, business affairs, internal operations and management procedures and those of its customers, clients or affiliates, but does not include information (1) lawfully obtained from third parties, (2) which is in the public domain, or (3) which is developed independently.
- b. Neither party shall use or disclose, directly or indirectly, any proprietary information concerning the other party obtained as a result of this Contract, except as required by law. Any proprietary information removed from the State's site by Contractor in the course of providing services under this Contract will be accorded at least the same precautions as are employed by Contractor for similar information in the course of its own business.

12. Federal Funds Contingency: Payment pursuant to this Contract, if from federal funds, whether in whole or in part, is subject to and contingent upon the continuing availability of federal funds for the purposes hereof. In the event that said funds, or any part thereof, become unavailable as determined by the State, the State may immediately terminate this Contract or amend it accordingly.

13. Records Maintenance: Contractor shall maintain complete files of all records, documents, communications, and other materials that pertain to the operation of the Program or the delivery of services under this Contract. Such files shall be sufficient to properly reflect all direct and indirect costs of labor, materials, equipment, supplies and services, and other costs of whatever nature for which a Contract payment was made. The books of original entry shall be recorded according to generally accepted accounting principles and shall be easily separable from other Contractor records. The records of Contractor will be maintained in an organized fashion and retained by Contractor as required by this Contract or the business record retention requirements of Contractor, whichever is longer.

- 14. Performance Monitoring:** Contractor shall permit the State and the U.S. Department of Health and Human Service (source of federal funding), and any other duly authorized agent or governmental agency, to monitor all activities conducted by Contractor pursuant to the terms of this Contract. As the monitoring agency may in its sole discretion deem necessary or appropriate, such monitoring may consist of internal evaluation procedures, examination of Program data, special analyses, on-site checking, formal audit examinations, or any other reasonable procedures. All such monitoring shall be performed in a manner that will not unduly interfere with Contract work.
- 15. Audits and Inspections:** Contractor authorizes the State to perform audits and/or inspections of its records at any reasonable time during the term of this Contract, or any extension(s) thereof, and for a period of five (5) State fiscal years following the date of final payment under this Contract, to assure compliance with its terms and/or to evaluate Contractor's performance hereunder.
- Any amounts which have been paid by the State which are found to be improper in accordance with the terms of this Contract shall be immediately returned to the State or may be recovered in accordance with the remedies provision of this Contract.
- 16. Single Audit Clause:** All non-profit sub-recipients, cooperating state agencies and county governments receiving more than \$300,000 per fiscal year in federal funds shall comply with the requirements for audit as established by the U.S. Office of Management and Budget Circular Number A-128 and A-133 for obtaining financial and compliance audits. The standards to be followed may also be found in the Standards for Audit of Governmental Organizations, Programs, Activities and Functions issued by U.S. General Accounting Office, 1988 Revision, or the Guidelines for Audits of Federal Awards to Non-profit Organizations (April 1989) published by the U.S. Department of Health and Human Services. For purposes of State and local governmental agencies, the term independent auditor means a state or local government who meets the independence standards specified in Generally Accepted Auditing Standards; or a public accountant who meets such standards. If Contractor is subject to an audit required by the federal Single Audit Act of 1984, Contractor shall submit a complete set of financial statements and reports along with the Cost Report for the period under audit.
- 17. Assignment/Delegation/Subcontracting:** Except as herein specifically provided otherwise, the duties and obligations of Contractor arising hereunder cannot be assigned, delegated or subcontracted except with the express prior written consent of the State. Subcontracts permitted by the State shall be subject to the requirements of this Contract, and Contractor is responsible for all subcontracting arrangements and the delivery of services as set forth in this Contract. Failure of the subcontractor to provide services in accordance with the requirements of this Contract shall be the responsibility of Contractor. Contractor warrants and agrees that any subcontract resulting from its performance under the terms and conditions of this Contract shall include a provision that Contractor shall require the subcontractor to abide by the terms and conditions hereof, as well as all other applicable federal and State laws, rules and regulations pertinent hereto that have been or may hereafter be established. Also, Contractor warrants and agrees that all subcontracts shall include a provision that the subcontractor shall indemnify and hold harmless the State of Colorado, Department of Health Care Policy and Financing from any claims, damages, or costs arising from, or in any way related to the subcontract or any performance thereunder. Subcontractors must be certified to work on any equipment for which their services are obtained.
- 18. Successors:** Except as herein specifically provided otherwise, this Contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.
- 19. Representatives:** For the purposes of this Contract, the individuals identified below are hereby designated representatives of the respective parties. Either party may from time to time designate in writing a new or substitute representative(s):

For the State:

For Contractor:

Name Title

Name Title

- 20. Authority:** With respect to the representative of the State, such individual shall have the authority to inspect and reject services, approve invoices for payment, and act otherwise for the State, except with respect to the execution of formal amendments.
- 21. Notice:** Any notice required or permitted to be given by the parties hereunder shall be given in writing and sent by first class U.S. mail to the individuals at the addresses set forth below. Either party may from time to time designate in writing a substitute person(s) or address to whom such notices shall be sent:

To the State:

To Contractor:

- 22. Litigation:** Contractor shall promptly notify the State in the event that Contractor learns of any actual litigation in which Contractor is a party defendant in a case which involves services provided under this Contract. Contractor, within ten (10) calendar days after being served with a summons, complaint, or other pleading which has been filed in any federal or state court or administrative agency, shall deliver copies of such document(s) to the State's Executive Director. The term "litigation" includes an assignment for the benefit of creditors, and filings in bankruptcy, reorganization and/or foreclosure.
- 23. Disputes:** Except as herein specifically provided otherwise, disputes concerning the performance of this Contract which cannot be resolved by the designated Contract representatives shall be referred in writing to a senior departmental manager designated by the Department and a senior manager designated by Contractor. Failing resolution at that level, disputes shall be presented in writing to the Department's Executive Director and Contractor's chief executive officer for resolution. This process is not intended to supersede any other process for the resolution of controversies provided by law.
- 24. Remedies:** Notwithstanding any other provision of this Contract, the Executive Director of the Department or his/her designee may exercise any one or all of the following remedial actions should s/he find that Contractor substantially failed to satisfy the scope of work described in this Contract. Substantial failure to satisfy the scope of work shall be defined to mean incorrect or improper activities or inaction by Contractor. These remedial actions are as follows:
- a. Withhold payment to Contractor until the necessary services or corrections in performance are satisfactorily completed;
 - b. Require Contractor to provide a corrective action plan when the Department's Executive Director or his/her designee determines that a Contractor's employee has performed incompetently, carelessly, insubordinately, unsuitably or otherwise unacceptably.
 - c. Deny payment or recover reimbursement for those services or deliverables which have not been performed and which due to circumstances caused by Contractor cannot be performed, or if performed would be of no value to the State. Denial of the amount of payment shall be reasonably related to the amount of work or deliverables lost to the State;
 - d. Terminate the Contract for cause immediately without prior notice and an opportunity to cure, and without compensation for termination costs. In the event this Contract is terminated for cause under this provision, payments to Contractor may be withheld at the discretion of the State until completion of a final audit, and the State will only reimburse Contractor for acceptable work or deliverables received to the date of termination.
 - e. Incorrect payments made to Contractor due to omission, error, fraud, and/or defalcation shall be recovered from Contractor by deduction from subsequent payments under this Contract or other contracts between the State and Contractor, or by the State as a debt due to the State, or otherwise as provided by law.

25. Restrictions on Lobbying: Contractor certifies, to the best of Contractor's knowledge and belief, that:

- a. No Federal appropriated funds have been paid or will be paid by or on behalf of Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any contract, or the extension, continuation, renewal, amendment, or modification of any contract, grant, loan or cooperative agreement that utilizes federal funds.
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with this Contract, Contractor shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- c. Contractor shall require that the language of this certification be included in the award documents for subawards at all tiers (including subcontracts, subgrants and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of the certification is a prerequisite for making or entering into this transaction imposed by Title 31, U. S. Code Section 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

26. Debarment, suspension and voluntary exclusion: As required by federal Executive Order 12549, Contractor certifies to the best of Contractor's knowledge and belief as follows:

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Participant

- a. The prospective lower tier participant certifies, by submission of this Contract, that neither it nor its principals is presently debarred, declared ineligible, or voluntarily excluded from participation in this Contract by any federal debarment or agency.
- b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this Contract.
- c. "Lower Tier Participant" is defined to include Contractor and Contractor's principals, agents and subcontractors who are obligated to perform services pursuant to the terms of this Contract. Contractor agrees that it will include, without modification, the above Certification clause in any subcontract it may enter into.

27. Integration of Understandings: This Contract is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion or other amendment hereto shall have any force or effect unless embodied in a written contract executed and approved pursuant to the State's Fiscal Rules.

28. Governmental Immunity: Notwithstanding any other provision of this Contract to the contrary, no term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the CGIA, as it now exists or may hereafter be amended. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of the CGIA as it now exists or may hereafter be amended, and the risk management statutes, Sections 24-30-1501, et seq., C.R.S., as they now exist or may hereafter be amended.

- 29. Force Majeure:** Neither Contractor nor the State shall be liable to the other for any delay in, or failure of performance, of any covenant or promise contained in this Contract, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by "force majeure". As used in this Contract, "force majeure" means acts of God; acts of the public enemy; acts of the State and any governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather.
- 30. Software Piracy Prohibition:** No State or other public funds payable under this Contract shall be used for the acquisition, operation or maintenance of computer software in violation of United States copyright laws or applicable licensing restrictions. The Contractor hereby certifies that, for the term of this Contract and any extensions, the Contractor has in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that the Contractor is in violation of this paragraph, the State may exercise any remedy available at law or equity or under this Contract, including, without limitation, immediate termination of the Contract and any remedy consistent with United States copyright laws or applicable licensing restrictions.

SPECIAL PROVISIONS

(Not for Use with Inter-Governmental Contracts)

1. CONTROLLER'S APPROVAL. CRS 24-30-202 (1)

This contract shall not be deemed valid until it has been approved by the Controller of the State of Colorado or such assistant as he may designate.

2. FUND AVAILABILITY. CRS 24-30-202 (5.5)

Financial obligations of the State of Colorado payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

3. INDEMNIFICATION.

The Contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by the Contractor, or its employees, agents, subcontractors, or assignees pursuant to the terms of this contract.

4. INDEPENDENT CONTRACTOR. 4 CCR 801-2

THE CONTRACTOR SHALL PERFORM ITS DUTIES HEREUNDER AS AN INDEPENDENT CONTRACTOR AND NOT AS AN EMPLOYEE. NEITHER THE CONTRACTOR NOR ANY AGENT OR EMPLOYEE OF THE CONTRACTOR SHALL BE OR SHALL BE DEEMED TO BE AN AGENT OR EMPLOYEE OF THE STATE. CONTRACTOR SHALL PAY WHEN DUE ALL REQUIRED EMPLOYMENT TAXES AND INCOME TAX AND LOCAL HEAD TAX ON ANY MONIES PAID BY THE STATE PURSUANT TO THIS CONTRACT. CONTRACTOR ACKNOWLEDGES THAT THE CONTRACTOR AND ITS EMPLOYEES ARE NOT ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS THE CONTRACTOR OR THIRD PARTY PROVIDES SUCH COVERAGE AND THAT THE STATE DOES NOT PAY FOR OR OTHERWISE PROVIDE SUCH COVERAGE. CONTRACTOR SHALL HAVE NO AUTHORIZATION, EXPRESS OR IMPLIED, TO BIND THE STATE TO ANY AGREEMENTS, LIABILITY, OR UNDERSTANDING EXCEPT AS EXPRESSLY SET FORTH HEREIN. CONTRACTOR SHALL PROVIDE AND KEEP IN FORCE WORKERS' COMPENSATION (AND PROVIDE PROOF OF SUCH INSURANCE WHEN REQUESTED BY THE STATE) AND UNEMPLOYMENT COMPENSATION INSURANCE IN THE AMOUNTS REQUIRED BY LAW, AND SHALL BE SOLELY RESPONSIBLE FOR THE ACTS OF THE CONTRACTOR, ITS EMPLOYEES AND AGENTS.

5. NON-DISCRIMINATION.

The contractor agrees to comply with the letter and the spirit of all applicable state and federal laws respecting discrimination and unfair employment practices.

6. CHOICE OF LAW.

The laws of the State of Colorado and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution, and enforcement of this contract. Any provision of this contract, whether or not incorporated herein by reference, which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules, and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this contract to the extent that the contract is capable of execution.

At all times during the performance of this contract, the Contractor shall strictly adhere to all applicable federal and State laws, rules, and regulations that have been or may hereafter be established.

7. VENDOR OFFSET. CRS 24-30-202 (1) & CRS 24-30-202.4

Pursuant to CRS 24-30-202.4 (as amended), the State Controller may withhold debts owed to State agencies under the vendor offset intercept system for: (a) unpaid child support debt or child support arrearages; (b) unpaid balance of tax, accrued interest, or other charges specified in Article 21, Title 39, CRS; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) owed amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State or any agency thereof, the amount of which is found to be owing as a result of final agency determination or reduced to judgment as certified by the controller.

8. SOFTWARE PIRACY PROHIBITION GOVERNOR'S EXECUTIVE ORDER

No State or other public funds payable under this Contract shall be used for the acquisition, operation or maintenance of computer software in violation of United States copyright laws or applicable licensing restrictions. The Contractor hereby certifies that, for the term of this Contract and any extensions, the Contractor has in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that the Contractor is in violation of this paragraph, the State may exercise any remedy available at law or equity or under this Contract, including, without limitation, immediate termination of the Contract and any remedy consistent with United States copyright laws or applicable licensing restrictions.

9. EMPLOYEE FINANCIAL INTEREST. CRS 24-18-201 & CRS 24-50-507

The signatories aver that to their knowledge, no employee of the State of Colorado has any personal or beneficial interest whatsoever in the service or property described herein.

SPECIAL PROVISIONS

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

CONTRACTOR:

Legal Name of Contracting Entity

Social Security Number or FEIN

Signature of Authorized Officer

Print Name & Title of Authorized Officer

STATE OF COLORADO:
BILL OWENS, GOVERNOR

By _____
For Karen Reinertson, Executive Director

Department of Health Care Policy and Financing

LEGAL REVIEW:
Ken Salazar, ATTORNEY GENERAL

By _____

CORPORATIONS:

(A corporate seal or attestation is required.)

Attest (Seal) By _____
(Corporate Secretary or Equivalent, or Town/City/County Clerk)

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS 24-30-202 requires that the State Controller approve all state contracts. This contract is not valid until the State Controller, or such assistant as he may delegate, has signed it. The contractor is not authorized to begin performance until the contract is signed and dated below. If performance begins prior to the date below, the State of Colorado may not be obligated to pay for the goods and/or services provided.

STATE CONTROLLER:
Arthur L. Barnhart

By _____

Date _____